

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 845 OF 2020
CRIMINAL WRIT PETITION NO. 846 OF 2020
CRIMINAL WRIT PETITION NO. 847 OF 2020
CRIMINAL WRIT PETITION NO. 848 OF 2020**

Sanjay Rambhau Raut .. Petitioner

Versus

The State of Maharashtra & Anr. .. Respondents

Mr.Joydeep Chatterji, Advocate for the petitioner.

Mr.Y.G.Gujarati, APP for the respondent/State.

Mr.Mukul Kulkarni, Advocate for respondents in WP Nos.845,846/2020.

Mr.Aditya N. Sikchi, Advocate for respondent No.2 in WP No.847/2020.

Mr.Mukund L. Kolhe, Advocate for respondents in WP 848/2020.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	13.01.2023
PRONOUNCED ON	:	28.02.2023

ORDER :-

01. Since the petitioner is the same and since all the petitions are arising out of the same proceeding, those are taken together for hearing.

02. Heard learned Advocates for the parties. The petitions are taken up for final disposal by consent.

03. The petitioner/original complainant has approached this Court challenging the orders passed by the learned Additional Sessions Judge-1, Jalna dated 04.01.2020 in Criminal Revision No. 117, 118, 119 and 123 of 2021 respectively, filed by the respective respondents, challenging the order passed by the learned Judicial Magistrate, First Class, Court No.2, Jalna dated 10.12.2019 issuing directions to the Police to carry out investigation under section 156(3) of the Cr.P.C. and investigate into the complaint lodged by the petitioner.

04. The facts giving rise to the petitions are that the petitioner runs Hotel Adarsh Palace in Jalna. The respondents are working in the Police Department. Accused No.1 at the relevant time was the Superintendent of Police. It is alleged that on 03.05.2015 at 10.30 p.m. when the petitioner and his son were in the hotel, his servants, who are cited as witnesses, closed the main gate of hotel. While switching off the lights, two police constables came to the hotel of the complainant and asked as to whether hotel is closed. Those constables asked for two bottles of water. The watchman came to the Manager and gave two bottles to the constables and asked for money for the bottles. On that it is alleged that the constables got annoyed and started abusing the

watchman. The Manager immediately came and tendered apology saying that the watchman did not recognize the constables. It is alleged that on that the police constables abused the Manager in the name of caste and assaulted him. Those police constables even called for police force on the false pretext. The police force came and beaten the petitioner, his son and other staff persons working in the hotel. They practically vandalized and took hard-disk of the CCTV footage along with Rs.2,40,000/- from the shelf. It is further alleged that they also took all the important documents and other valuables from the hotel.

05. The petitioner, thereafter, on 12.05.2015 made a complaint to the Chandanzira Police Station and thereafter on 14.05.2015 he made complaint to the Superintendent of Police, Jalna. He also thereafter sent complaint to the Director of Police, Chief Minister, Prime Minister by RPAD. By reproducing the complaint which was sent by him, he filed complaint seeking directions under section 156(3) of the Cr.PC. It is also alleged that some of the officers i.e. accused No.1 – Dixit Gedam told him that he happens to be IPS Officer and he will not keep evidence of whatever is done. He also threatened that he will close down the hotel and see to it that family of the petitioner comes on

the street. Further it is alleged that he also threatened that he will finish entire family of the petitioner. On 08.05.2015 it is alleged that again some unknown persons encircled the hotel and threatened that they will finish the petitioner and other family members. The petitioner felt danger to his life and was compelled to file the complaint petition. In the complaint it is further submitted that inspite of making complaint to the officers and higher officers, no cognizance is taken. The petitioner, thereafter, had also approached this High Court by filing Criminal Writ Petition No.883 of 2015. However, High Court by order dated 05.10.2015 disposed off the petition by directing the petitioner to resort to other remedies in law. Thus, the complaint under section 156(3) of the Cr.P.C. came to be filed.

06. The learned JMFC on going through the applications, issued directions by order dated 10.12.2019. The accused persons challenged the said order by filing criminal revision applications, total four in number, in Sessions Court at Jalna, on various grounds. The learned Sessions Judge by separate orders allowed the revision applications of the accused persons and quashed the order passed by the learned JMFC under section 156(3) of the Cr.P.C.

07. The learned Sessions Judge firstly dealt with the point of sanction under section 197 of the Cr.P.C. and held that even before issuance of directions under section 156(3) of the Cr.P.C., it was necessary to obtain sanction under section 197 of the Cr.P.C. It is further held that there is no necessary compliance made by the petitioner before making the complaint application for investigation under section 156(3) of the Cr.P.C. The Sessions Court further considered provisions of section 161(1) of the Bombay Police Act and held by its judgment dated 04.01.2020 that the complaint is filed beyond prescribed period as prescribed under section 161 of the Bombay Police Act and as such the complaint was time barred.

08. Thus, now this petitioner is before this Court mainly on the ground that the learned Magistrate had rightly issued directions under section 156(3) of the Cr.P.C. by looking to the specific allegations made in the complaint. It is further brought to the notice that specific allegations are made which requires investigation. The learned Sessions Judge has committed wrong in holding that application under section 156(3) could not have been entertained for want of compliance of supporting affidavit as prescribed in

Chapter VII of the Criminal Manual. Secondly that the learned Sessions Judge has wrongly held that no specific acts of the accused are stated, when in-fact sufficient details are given in the complaint, as regards beating up the complainant, his son and servants and removing and taking away cash from the drawer of the hotel, CCTV footage hard-disk is also taken by the police. The last ground that when the limitation is prescribed under the Criminal Procedure Code, reliance under section 161 of the Bombay Police Act could not have been resorted to, since the offences are cognizable and punishable with more than three years punishment.

09. So far as complaint under section 156(3) of the Cr.P.C. is concerned, the learned Advocate for the petitioner submits that as a matter of fact, he had immediately reported the incident to the police station and thereafter to various authorities and thus there is compliance of section 156(3) of the Cr.P.C. and the learned Trial Judge has rightly passed the order issuing summons. He submitted that the learned Revisional Court committed wrong by observing that pre-requisite conditions for issuing order under section 156(3) of the Cr.P.C. are not followed.

10. In support of the petition, the learned Advocate for the petitioner Mr. Chatterji has relied upon judgment in the case of **D.Devaraja Vs. Owai Sabeer Hussain reported in AIR 2020 SC 3292**, wherein the Hon'ble Apex Court has considered the provisions of section 197 of the Cr.P.C. and section 170 of the Karnataka Police Act, which are relevant for the purpose of this petition. It is held in the said judgment that sanction of the Government to prosecute the police officer for any act related in discharge of official duty is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. It is further held that every offence committed by police officer does not attract section 197 of the Cr.P.C. read with section 170 of the Karnataka Police Act. The Hon'ble Supreme Court in that case held that protection is available only when the alleged act done by the public servant is reasonably connected with discharge of his official duty. It is observed that official duty is not merely cloak for the objectionable act. Learned Advocate Mr. Chatterji thus submits that in the present case the acts of the accused persons cannot even remotely be considered to be an act in discharge of official duty. There is no reasonable and even remote connection of the alleged act with the discharge of official duty and thus submits that the learned Sessions Judge has committed wrong by holding that sanction under

section 197 of the Cr.P.C. is necessary.

11. The learned Advocate Mr.Mukul Kulkarni for the respondents in Criminal Writ Petition Nos.845 & 846 of 2020 mainly argued that about very same incident a crime is registered against the petitioner. As a matter of fact, it was a raid conducted on hotel as there were complaints received by the police about illegal activities going on in the hotel of the petitioner. Some of the activities were even falling under the Prevention of Immoral Traffic Act. The raid was, therefore conducted. Charge-sheet is also filed and he is being prosecuted. It is only to counter that, the petitioner has filed this complaint. The petitioner is facing trial in Crime No.64 of 2015 Chandanzira Police Station for the offences punishable under sections 353, 323, 506 r/w section 34 of the Indian Penal Code and sections 3 and 4 of the Prevention of Immoral Traffic Act. He is also facing trial in Crime No.3033 of 2015 for the offence under section 188 of the IPC and N.C. No.11 of 2015 under section 33(W) of the Maharashtra Police Act in Chandanzira Police Station. He further submits that one more offence i.e. Crime No.190 of 2015 for the offence under section 353 of the IPC registered with Sadar Bazar Police Station and the same is under investigation. Thus, there are serious offences registered against the

petitioner. These offences are registered much prior in time, which are pending even prior to this incident.

12. The learned Advocate for the respondents submits that though the incident is of the year 2015, the petition under section 156(3) is filed in the month of May, 2018. As regards limitation to file the complaint is concerned, he submits that section 468 of the Cr.P.C. is general in nature, whereas section 161 of the Bombay Police Act is applicable to a special category of offences and those will prevail upon the general provision, as rightly observed by the learned Sessions Judge.

13. The learned Advocate for the respondents further submitted that proviso to Section 161 of the Bombay Police Act provides for limitation of two years after sanction is obtained. In this case, the application for sanction itself is made for the first time on 01.08.2018. Taking into consideration the date of incident i.e. 03.05.2015, the date of application itself is beyond limitation of two years. The sanction is applied under section 197 of the Cr.P.C., whereas in this case it was required under section 161 of the Bombay Police Act. He submits that though the petitioner earlier filed Criminal Writ Petition No. 883

of 2015, same was disposed off by granting liberty to resort to such other remedy as available in law by order dated 05.10.2015. Thus, even after disposal of the writ petition, the petitioner did not take any steps for almost three years.

14. The learned Advocate further submits that petitioner's affidavit is not in format as required for action under section 156(3) of the Cr.P.C. He submits that filing of an affidavit is not an empty formality. He lastly submits that no specific offence is disclosed against the accused persons. The learned Advocate thus supports the order passed by the learned Sessions Judge in the revision. He relied upon Entry II, List 2 of VII Schedule prepared under Article 246 (2) of the Constitution of India and also relied upon judgment in the case of UPS Madan Vs. State of Maharashtra & Ors. reported in MANU/MH/0967/2019. He submits that the Bombay Police Act enacted by the State of Maharashtra provides for a sanction against police officer under section 161 of the Act. It is, therefore, sanction under section 161 of the Bombay Police Act that would be necessary being a special provision. The petitioner, has sought a sanction under section 197 under the general law.

15. The learned Advocate Mr. Mukund Kolhe for the respondents in Cr.W.P No.848 of 2020 adopted the arguments of learned Advocate Mr. Kulkarni. He further submitted that in the entire application under section 156(3) of the Cr.P.C. the averments are only against two persons. He submitted that the Revisional Court has rightly observed that the complaint is totally silent about specific acts of all the accused, so as to attribute the alleged offence against them. All the allegations are vague. The learned Advocate relied upon judgment in the case of Sayed Anwar Ahmed & Anr. Vs. The State of Maharashtra & Anr. reported in 2017 ALL MR (Cri) 445.

16. The learned Advocate Mr. Sikchi for the respondents in Cr.W.P No.847 of 2020 adopts arguments of learned Advocates Mr. Kulkarni and Mr. Kolhe.

17. The learned APP supports the order passed by the learned Sessions Judge.

18. In rebuttal, learned Advocate Mr. Chatterji made submissions on the basis of Three Judges judgment in the case of State of Maharashtra Vs.

Atma Ram and Others, reported in AIR 1966 SC 1786 and submits that the acts alleged against the respondents cannot be said to be acts performed in discharge of official duty, such as removal hard disc etc.

19. These petitions are, thus, confined to three questions (i) whether there is compliance of section 156(3) of the Cr.P.C. before filing the complaint (ii) whether sanction under section 197 of the Cr.P.C. was necessary for issuing directions under section 156(3) of the Cr.P.C. and (iii) whether the complaint is within limitation in view of section 161 of the Bombay Police Act and/or whether the limitation would be governed by Section 468 of the Cr.P.C. Now this Court has to consider the submissions of both the sides in the light of judgments cited by the parties.

20. The learned Advocate for the petitioner heavily relied upon judgment in the case of State of Maharashtra Vs. Atma Ram & Ors. reported in AIR 1966 SC 1786, wherein the Hon'ble Apex Court has considered the provisions of section 161(1) and section 64(b) of the Bombay Police Act. It was held that the alleged act of the Police Officer of beating and confinement under colour of office is not connected with the official duty of the police

officer. It is held that there must be a reasonable connection or nexus between the alleged act of assault and confinement and the duty or authority imposed upon the officer under the Bombay Police Act. In that case the Sub-Inspector in-charge of the Police Station recorded information in the Station Diary on the basis of statement of one Atmaram in respect of disappearance of his brother. In the inquiry the police constable assaulted the persons with whom he had made inquiry. He also detained those person in the Baithak of Police Patel till they were taken to the office of Grampanchayat in the evening. He, thereafter, called for more police help. Other police constables arrived in response to the request. They again detained some of the persons in the Jungle and assaulted them. One of the persons was stripped naked and kept hanging on a Salai tree. The remaining persons were detained that night in the office of the Grampanchayat. It is in that view of the matter, the complaint was filed. The matter reached to the Supreme Court.

. This Court finds that, on facts, this case is not of any help to the petitioner.

21. The next judgment relied upon by the learned Advocate for the petitioner is in the case of **State of Maharashtra Vs. Mahadeo Narayan Giri &**

Ors., 2007 ALL MR (Cri) 2330. It was a case under section 302 of the IPC where the police officer was an accused of committing murder of an accused was beaten up mercilessly by the police officer and because of the said accused in the lockup died. In that view of the matter, this Court held that no sanction was required under section 161 of the Bombay Police Act. Even this case is not applicable to the present facts of the case. In this case, it is clearly come on record that the hotel of the petitioner was raided and prosecution is also lodged. It is, therefore, the petitioner started making complaints.

22. On the other hand, learned Advocates for the respondent relied upon judgment in the case of D.Devaraja (supra), wherein a question before the Hon'ble Supreme Court was in respect of provisions of section 170 of the Karnataka Police Act, which is almost pari materia to section 161 of the Bombay Police Act. The Hon'ble Apex Court in that case considered the object of sanction for prosecution under section 197 of the Cr.P.C. and section 170 of the Karnataka Police Act. The Hon'ble Supreme Court relied upon judgment in the case of Matajog Dobey Vs. H.C. Bhari reported in AIR 1956 SC 44 and held in paragraph Nos.68, 69 and 70 as below :-

“68. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police

officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government.

69. Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given under Section 197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act.

70. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.”

. In the above cited case the High Court had rejected the petition under section 482 of the Cr.P.C. and refused to set aside order of the Magistrate taking cognizance of the complaint. The judgment of the High Court came to be set aside. Thus, from the said judgment it is clear that the offence alleged against the police officer has a reasonable connection with the discharge of official duty, then sanction is required under the Bombay Police Act and not general sanction under section 197 of the Cr.P.C.

23. The next judgment relied upon by the learned Advocate for the respondent is in the case of **Sayed Anwar Ahmed & Anr. Vs. The State of Maharashtra & Anr. reported in 2017 ALL MR (Cri) 4457.** The Division Bench of this Court issued following guidelines :-

“(a) While dealing with a Complaint seeking an action under Sub-Section (3) of Section 156 of Cr.PC, the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint ;

(b) An Order passed on the said Complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it not necessary to record detailed reasons;

(c) The power under Sub-Section (3) of Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned 26 of 31 cr wp-924.16.sxw Magistrate can go in to the issue of the veracity of the allegations made in the Complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations;

(d) When a Complaint seeking an action under Sub-Section (3) of Section 156 is brought before the learned Metropolitan Magistrate or the learned Judicial Magistrate, it must be accompanied by an affidavit in support as contemplated by the decision of the Apex Court in Priyanka Srivastava. The affidavit must substantially comply with the requirements set out in Chapter VII of the Criminal Manual and especially paragraphs 5 and 8 which are quoted above; and

(e) Necessary averments recording compliance with Sub-Sections (1) and (3) of Section 154 of the CrPC should be incorporated with material particulars. Moreover, the documents in support of the said averments must filed on record.”

24. The learned Advocate for the respondents submits that in view of above quoted guidelines there is clearly violation of guidelines (a) and (d) in

the present case. These guidelines are based on the judgment in the case of Priyanka Shrivastava and Anr. Vs. State of Uttar Pradesh and Ors. 2015 ALL SCR 1592. (Shailesh Gandhi).

25. The last judgment relied upon by the learned Advocate for the respondents is in the case of UPS Madan (Supra) by a Division Bench of this Court, where it is held that in view of section 156(3) of the Cr.P.C. no complaint can be filed against public officer without valid sanction from the competent authority.

26. Considering all these judgments and the facts of this case, it is clear that the offence against the accused is about incident dated 03.05.2015. In respect of same incident, the petitioner is also facing a trial. There is no compliance under section 156(3) of the Cr.P.C. before filing the complaint in view of the judgment in the case of Sayed Anwar Ahmed (Supra) and UPS Madan (Supra). It is clear that the incident has reasonable connection with the discharge of official duty of the accused persons and therefore sanction under section 161 of the Bombay Police Act was necessary. From record, it is clear that there is no sanction obtained under section 161 of the Bombay

Police Act. As regards third question, it is clear position now, in view of above discussion, limitation is provided under section 161 of the Bombay Police Act.

27. Though it is submitted by Mr. Chatterji that in this case the acts of the respondents do not have relation with discharge of official duty, however, looking to the fact that already the petitioner is facing prosecution in respect of the same incident, his reliance on the judgment in the case of **D. Devaraja (supra)** is thus of no use to him. In this case it has clearly been shown that in fact a raid was conducted on the hotel of the petitioner. It is only petitioner's theory that hotel was vandalized. This cannot be accepted even for the reason of delay that is caused in lodging the complaint.

28. This Court finds that the petitioner does not satisfy all these questions. The learned Revisional Court has rightly passed an order. No illegality is committed. Thus, no interference is called for at the hands of this Court. The petitions are devoid of merits and deserve to be dismissed. Hence, the writ petitions are dismissed.

[KISHORE C. SANT, J.]